Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

Glenn Raleigh and Diane Raleigh,
Petitioners,
v.
Violet Trischan and Pamela Parry,
Opponents.

On Petition For Writ of Certiorari
To The Colorado Supreme Court and
To The Colorado Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Question Presented for Review

The Colorado Courts have not faithfully and uniformly applied the Colorado Revised Statues which specifically apply to pro se parties in the awarding of attorney fees in this pro se, civil case, and additionally the Colorado Court Rules which apply to all parties. In so doing, the courts have allowed unconditional access to the courts by the opposing attorney at the expense of the loss of equal protection for the pro se Petitioners legal right to self representation in the courts and due process.

The question for review by the United States Supreme Court is:

1. Do the judgments and opinions of the courts of Colorado, when they fail to address or apply uniformly relevant Colorado laws or parallel Federal laws which pertain to pro se parties, systematically discriminate against pro se parties and violate rights guaranteed in the Fourteenth Amendment, Section 1, to the United States Constitution, thus producing a chilling effect on the exercise of the right of self representation in the courts?

Jurisdiction

Jurisdiction of the United States Supreme Court results from denial of the writ of certiorari from the Colorado Supreme Court issued on October 29, 2001. 28 USC, Section 1257, gives jurisdiction to the United States Supreme Court. Notification has been given to the counsel of record for the Defendants/Opponents.

Citations

Federal

1. United States Constitution, Amendment XIV

Section 1. All persons born and naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws.

2. Federal Rules of Civil Procedure, Rule 11

Colorado

3. Colorado Revised Statute 13-17-102
4. Colorado Rules of Civil Procedure Rule 121

Statement Of The Case

Petitioners filed a case against Opponents in the Teller County District Court, State of Colorado, in libel and slander per se. The court ordered the case be tried per quod, but Plaintiffs could not prove loss of income and special damages, only loss of reputation in their neighborhood. The case was eventually Dismissed with "Each side to bear their own costs," and was never found to be frivolous, groundless or vexatious in any court.

Thereafter, there was no ongoing activity between the Court and the parties until fifty-nine days after dismissal when the Defendants filed a request for attorney fees and asked for a hearing as required by Colorado law for pro se cases. The District Court awarded $7,412.50 in attorney fees to Defendants against pro se Plaintiffs without holding the hearing required by the Colorado Revised Statute 13-17-102(6) for pro se parties and under which Defendants correctly filed for fees. In ruling the court did not find the case lacked substantial justification.

Moreover, Colorado Statutes specify filing for fees within fifteen days after final judgment which is strictly adhered to by the courts and attorneys, but in this case fees were filed for forty-five days late. Plaintiffs had timely filed an Objection to Attorney Fees and the delinquent filing of the Defendants. Short of denial of the tardy motion by the court, plaintiffs anticipated a hearing for arguments around fees.

Also in an unprecedented manner, the District Court awarded attorney fees for the Court of Appeals with no direction from that Court which is contrary to Colorado Court Rules.

Thus, we were denied our right to the trial on libel and hearing on any and all issues around the attorney fees, including objections to the District Court awarding fees for the Colorado Court of Appeals without direction.

We appealed the order awarding attorney fees to the Colorado Court of Appeals only to have the Judgment Affirmed.

The Colorado Supreme Court has denied our petition for writ of certiorari on October 29, 2001, which gives this court jurisdiction. As this Court knows from the November 2000 election and the related rulings from the State of Florida, the rulings of even the highest state level courts can be politically inclined. Petitioners believe such to be true in this case also.

Argument

This case comes before the United States Supreme Court regarding the very important right of self representation in our courts. The manner in which the courts in the State of Colorado have discriminated against pro se litigants, coming forth as Petitioners, is repugnant to the equal protection clause of the 14th Amendment to the United States Constitution and Federal laws. Petitioners are asking this Court to direct the Colorado courts in regard to their unfair handling of pro se cases.

The equal protection clause embodies a general rule that courts must treat similar cases alike if the parties can show facts sufficient to establish that they are similar. *Tonkovich v. Kan. Bd. of Regents,* 159 F.3d 504, 532 (10th Cir. 1998). The Colorado courts have not been treating similar cases alike for pro se parties who are being discriminated against by not receiving the statutory safe-harbor afforded by C.R.S. 13-17-102(6). In a further departure from accepted judicial practice, Colorado courts have applied uniform optimum time restraints unfairly against Petitioners in ways unprecedented in case law.

In Federal law, 42 USC and F.R.C.P. Rule 11, and then paralleled in Colorado law, C.R.S. 13-17-102(6), provisions are made specifically for the awarding of attorney fees against pro se litigants. Under such laws the court shall make findings that a case is merit less in the sense that it is groundless and without foundation prior to awarding attorney fees. Plaintiffs first noticed the Court of Appeals of this requirement in their Reply Brief to no avail.

The Colorado court's have upheld that the mere signing by a pro se litigant of a complaint is notification that the plaintiff believes the case has merit. It is for the court to take into consideration the pro se plaintiffs lack of understanding of subtle intricacies of law and for the court to allow careful consideration of the merits of a case.

A review of the record will show the Colorado courts have shown themselves to be sneaky in rendering judgment in this case and have been reckless in reviewing the pleadings and judgment. Further, the courts failed to make the determination necessary for a justifiable award of attorney fees that being that the case lacked substantial justification.

Further, the Federal laws preempts any inconsistencies with Colorado laws such that the courts shall make findings that the pro se plaintiffs knew that the case was frivolous and without merit prior to awarding attorney fees. *McCoy v. West*, 965 F.Supp. 34 (D. Colo. 1997). Absent such findings the awarding of attorney fees cannot stand.

Colorado courts have set the precedence upholding C.R.S. 13-17-102(6) to comply with the Federal laws, finding the court must rule the pro se plaintiffs knew the case to be groundless and that the pro se plaintiff need not even object to a motion for attorney fees and the reasonableness of the fees. *Artes Roy v. Lyman*, 833 P.2d 62 (Colo. App. 1992). However, in this case, the Court of Appeals makes no reference to the fact that plaintiffs are pro se and the prevailing nature of 13-17-102(6). In fact the Court of Appeals discounted the application of this statute and the supporting case law in favor of allowing a mandatory award of fees under 13-17-201, thereby nullifying the safe harbor of 13-17-102 and F.R.C.P Rule 11.

In the State of Colorado any award of attorney fees is predicated on a hearing on the issue to substantiate the costs and create a record for appeal. It is important in cases with pro se parties for the court at a hearing to establish the litigants understanding of the merits of the case, the reasonableness of the fees and create the record for appeal. When a party places a claim for fees in issue, the trial court has a duty to hold a hearing on that claim. *Zarlango v. Farrar*, 683 P.2d 1208 (Colo. App. 1984).

Further review of the record illustrates the findings of the Court of Appeals to be erroneous in that the Defendants did not ask for attorney fees under 13-17-201, but correctly filed for fees under C.R.S. 13-17-102. It was the sole decision of the Court to award attorney fees under 13-17-201 without a hearing.

The rulings of the courts of Colorado, in denying and circumventing the pro se safe-harbor on attorney fees while simultaneously making the necessary determination of groundless and frivolous moot, should be of grave concern for the United States Supreme Courts as such ruling insults Federal Rules also.

It is not for the court to punish pro se parties for lack of recognition of subtle legal intricacies that only a skilled attorney would know, like Plaintiffs written Objection to attorney fees did not specifically contain objection to certain fees such as the fees the District Court awarded for the Appeals Court the law is clear that the court was without authority to award attorney fees for the initial appeal without direction from the Appeals Court. *Sullivan v. Lutz*, 827 P.2d 626 (Colo. App. 1992).

In the State of Colorado any award of attorney fees is predicated on a hearing on the issue to substantiate the costs and create a record for appeal. This is important for pro se parties for the court to establish the litigants understanding of the merits of the case, the reasonableness of the fees while creating the record for appeal. When a party places a claim for fees in issue, the trial court has a duty to hold a hearing on that claim. *Zarlango v. Farrar*, 683 P.2d 1208 (Colo. App. 1984).

In the past several years the number of pro se cases has been increasing in Colorado as evidenced in legal publications and newspapers. It is of utmost importance that the courts become familiar with laws regarding pro se parties, to apply such laws correctly and to assist rather than stifle their participation in the court system.

It is proper for the United States Supreme Court to direct the courts of Colorado to abide by the preemptive F.R.C.P. Rule 11 and to provide the safe-harbor for pro se litigants in awarding attorney fees. It is unjust and discriminatory for a court to award attorney fees without having a hearing and fully establishing that a pro se party knew or should have known that a case lacked substantial justification.

It appears that the courts in Colorado are using the awarding of attorney fees against pro se parties to quell the right of self representation, even when such right has not been abused and the court rules and procedures have been respected.

In a different realm, the Colorado courts have set local practice standards to include Rule 121 in order to set the optimum time allowable and to encourage prompt filing for attorney fees within 15 days of final judgment. The court is allowed discretion to enlarge this time if there

is ongoing activity between the court and the parties and if a motion for extension of time is filed. The court's and counsel tenaciously adhere to these rule.

We have spoken with numerous attorneys who fear being one day late on filing for costs or fees. Additionally, not one could believe that any court in Colorado would consider a motion for attorney fees which was filed 59 days after final judgment was entered. All indicated a familiarity with the bias of the Colorado court's against pro se litigants as shown here.

It was more than two weeks after the time had lapsed for filing an appeal when the Defendant filed for attorney fees against the pro se Plaintiffs. Once again, the Court stepped outside the historical and accepted rules and time constraints for filing, accepting the Defendants motion more than six weeks late. Again, this appears to be an attempt to punish the pro se party and in so doing the court is discriminating against us to thwart our interest in self representation.

Erroneously in ruling the Court of Appeals has referenced this tardiness as "several" weeks late when it is actually 6+ weeks late as per the record. Allowing such tardy filing was unreasonable and should we have known Defendants were going to file for fees so late, or that the Court would be so loose as to allow such a tardy filing for attorney fees, we would have appealed the per se and per quod issue.

It is understandable that in certain cases a filing for fees may be a number of days late for good cause shown and that the court is allowed discretion to enlarge the time for filing. However, in this case with no ongoing activity or indication that fees would be filed for, it is clearly an abuse of discretion and an act of discrimination.

The Affirmation of the decision of the lower court by the Appeals Court is a further deterrent for the pro se plaintiffs and chills our willingness to exercise our right of self representation in the courts, thus forcing us to hire legal counsel in this recognition of pro se discrimination in Colorado. *Houston v. Norton*,215 F.3d 1172 (10th Cr.2000)

The Colorado courts have made numerous attempts to quash our right to represent ourselves in the court including our rights as a Landlord on eviction. The

court process has not been responsive to us as pro se litigants. The courts have initiated ways and means to nullify our pro se rights by undermining the statutes and precedents, thus discriminating against Colorado citizens by not providing equal protection under the law.

It takes a great deal of belief in the judicial system and dedication to that belief to file a pro se case at any court level and to respect and follow the rules and procedures.

In summary, the Colorado courts have denied Petitioners the right of equal protection under the laws in allowing the late filing for attorney fees, in disallowing a hearing on attorney fees when requested and required, and disallowing a trial on libel per se. Pursuant to C.R.S. 13-17-102, the safe-harbor for pro se parties on the issue of attorney fees, the Colorado court must hold a hearing and determine the case lacked substantial justification. There was not a single mention that the case was frivolous, groundless or vexatious by any court. It has been shown that as pro se plaintiffs, Petitioners were not even put on a level playing field with attorneys who under Colorado law are granted hearings when attorney fees are at issue.

The aim in construing the applicable statutes and rules is to ascertain and give effect to their intent. Now, it is only this court that can interpret and prevent the undermining of the intent of the Colorado Revised Statutes, the Court Rules and the Federal laws which pertain to pro se litigants and awards of attorney fees.

The Raleighs respectfully submit that this case poses an issue of considerable public importance and significance, including the preservation of judicial integrity in the use of it's discretion, and the right of each person to be treated fairly and equally within the judicial system.

The Raleighs, the Petitioners, respectfully request this court to accept this case on certiorari.

Respectfully submitted on this 24th day of January, 2002.

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APPENDIX

SUPREME COURT, STATE OF COLORADO
Case No. 01SC466
TWO EAST 14th AVENUE
DENVER, COLORADO, 80203

CERTIORARI TO THE COURT OF APPEALS
No. 99CA2461
DISTRICT COURT, TELLER COUNTY, 98CV174

Petitioners:
GLENN RALEIGH and DIANE RALEIGH,
v.
Respondents:
VIOLET TRISCHAN and PAMELA PARRY.

ORDER OF THE COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, briefs and the judgment of said Court of Appeals,

IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, October 29, 2001.

Court Seal

Supreme Court
State of Colorado
Certified to be a full, true and correct copy
OCT 29 2001
MAC V. DANFORD
Clerk of the Supreme Court
By "s/MKerr"
Deputy Clerk

COLORADO COURT OF APPEALS

Court of Appeals No. 99CA2461
Teller County District Court No. 98CV174
Honorable David D. Parrish, Judge

GLENN RALEIGH and DIANE RALEIGH,
Plaintiffs/Appellants,
v.
VIOLET TRISCHAN and PAMELA PARRY,
Defendants/Appellees.

JUDGMENT AFFIRMED
Division III
Opinion by JUDGE MARQUEZ
Ney and Pierce, JJ., concur
NOT SELECTED FOR PUBLICATION
March 29, 2001

Plaintiffs, Glenn Raleigh and Diane Raleigh, appeal the judgment awarding attorney fees to defendants, Violet Trischan and Pamela Parry. We affirm.

Plaintiffs filed a complaint against defendants asserting claims for libel and slander. Based upon a motion filed by defendants, the trial court dismissed plaintiffs' slander claim because it was time barred. The trial court further indicated that it would dismiss plaintiffs' remaining libel claim unless they amended the complaint to allege special damages. Instead of amending the complaint, plaintiffs filed a notice of appeal. Defendants moved to dismiss the appeal citing the lack of a final order. This court granted defendants' motion and dismissed the appeal without prejudice.

Upon remand to the trial court, defendants renewed their motion to dismiss plaintiffs' libel claim. When plaintiffs failed to respond to that motion or amend their complaint, the trial court dismissed the action.

Approximately sixty days later, defendants filed a motion requesting an award of attorney fees pursuant to C.R.S. 13-17-102, 13-17-201, C.R.S. 2000, and C.R.C.P. 11. Defendants attached copies of their counsel's billing

sheets to their motion, showing time spent and fees incurred in the case, including efforts to obtain dismissal of plaintiffs' initial appeal. Plaintiffs filed a response in which they argued that defendants' motion was untimely and that their claims had not lacked substantial justification.

Without conducting a hearing, the trial court issued an order awarding defendants fees totaling $7,412.50 pursuant to C.R.S. 13-17-201.

I.

Plaintiffs first contend that the trial court erred in awarding attorney fees because defendants' motion was untimely. We perceive no error.

C.R.C.P. 121, Section 1-22(2)(b) provides that a request for an award of attorney fees be filed within 15 days of the entry of the pertinent order or judgment, or within "such greater time as the court may allow." In interpreting similar language contained in a prior version of this rule, a division of this court held that the 15-day time limit is not jurisdictional. SEE Forness v. Blum, 796 P.2d 496 (Colo. App. 1990).

Furthermore, a party's failure to request an extension of time does not preclude a trial court from considering a request for fees filed beyond the 15-day deadline. In re Marriage of Wright, 841 P.2d 358 (Colo. App. 1992); see Koontz v. Rosnar, 787 P.2d 192 (Colo. App. 1989).

Here, defendants asserted that any delay was the result of settlement negotiations with plaintiffs, who were threatening to appeal the underlying dismissal order. Defendants attached correspondence between their counsel and plaintiffs showing these negotiations, which also involved a request that plaintiffs pay defendants' attorney fees.

Although defendants' motion was filed several weeks after the 15-day deadline, under the circumstances presented, we are not persuaded that the trial court abused it's discretion in addressing the motion.

II.

Plaintiffs next contend that the attorney fees award must be reversed because the trial court did not conduct a hearing. We disagree.

Plaintiffs rely on cases addressing the necessity of a hearing when attorney fees are awarded pursuant to C.R.S. 13-17-101, et seq., C.R.S. 2000. See, e.g., Pedlow v. Stamp, 776 P.2d 382 (Colo.1989). However, those cases do not control the attorney fees award at issue here, which was based solely on 13-17-201.

Nor, in our view, was the trial court required to conduct a hearing under C.R.C.P. 121, Section 1-22(2)(c). While that section provides that the trial court must grant a party's timely request for a hearing "when required to do so by law," in all other cases a hearing is discretionary based upon the amount of fees sought, the sufficiency of disclosure in the moving party's motion and supporting documents, and the extent and nature of any objections made in response to the motion.

Here, it does not appear that the trial court was required by law to conduct a hearing. Further plaintiffs did not request a hearing. Nor did they challenge the reasonableness of any fee item listed in defendants' supporting documents, or the overall amount requested. See Dunlap v. Long, 902 F.2d 446 (Colo. App (1985)(if reasonableness of fees requested is challenged, challenging party is entitled to an evidentiary determination of the issue). Indeed, in their response to defendants' motion, plaintiffs specifically asked the trial court to deny defendants request for a hearing. Thus, the only issues for the trial court to resolve were whether the dismissal of plaintiffs' claims fell within the coverage of 13-17-201, a purely legal determination, and the reasonableness of the fees defendants requested, an issue plaintiffs did not challenge.

Under these circumstances, we perceive no error or abuse of discretion in the trial court's decision to award attorney fees without conducting a hearing. See C.R.C.P. 121, Section 1-22(2)(c); see also Santa's Workshop v. A.B. Hirschfeld Press, Inc., 851 P.2d 264 (Colo. App 1993)(trial court's failure to conduct hearing prior to entering attorney fees award did not require reversal where party did not request hearing or object to reasonableness of fees requested).

III.

Plaintiffs also contend that the award was erroneous because their libel and slander claims did not fall within the coverage of 13-17-201. Again, we disagree.

Section 13-17-201 applies to "actions brought as a result of death or an injury to person or property occasioned by the tort of any other person."

The intent of the General Assembly in enacting 13-17-201 was to discourage unnecessary litigation of tort claims. State v. Golden's Concrete Co., 962 P.2d 919 (Colo. 1998).

The statute neither explicitly nor implicitly contemplates the existence of some manner or degree of physical harm to a person or to property. We are not persuaded that the statute is limited in applicability to a "species" of tort claims and is inapplicable to a tort claim which alleges only economic injury. Houdek v. Mobil Oil Corp., 879 P.2d 417 (Colo. App. 1994).

Contrary to plaintiffs' contention, claims for libel and slander, more generally classified as defamation, involve injury to a person's reputation and sound in tort. See Keohane v. Stewart, 882 P.2d 1993 (Colo. 1994). Consequently, the trial court did not err in determining that plaintiffs' claims fell within the scope of 13-17-201.

IV.

We also disagree with plaintiffs contention that the trial court's dismissal order, which provided that the parties were to pay their own respective costs, precluded the subsequent attorney fees award.

Contrary to plaintiffs' assertion, the term "costs" normally does not include attorney fees. In re Marriage of Wright, supra; see Lanes v. O'Brien, 746 P.2d 1366 (Colo. App. 1987). Thus, the trial court's order allocating costs to each side could not reasonably be interpreted as an order denying attorney fees.

V.

Plaintiffs next contend that the trial court erred in awarding defendants' fees associated with obtaining dismissal of plaintiffs' initial appeal. We conclude that plaintiffs failed to preserve this contention for appellate review.

Arguments never presented to, considered, or ruled

upon by a trial court may not be raised for the first time on appeal. Estate of Stevenson v. Hollywood Bar & Cafe, Inc., 832 P.2d 718 (Colo. 1992).

Here, plaintiffs failed to argue that the trial court was precluded from awarding fees associated with dismissal of the initial appeal. Indeed, as set forth above, plaintiffs did not challenge any of the specific items listed in defendants' billing statements. Under these circumstances, we decline to consider this contention of error. See Estate of Stevenson v. Hollywood Bar & Cafe Inc., supra; see also Robertson v. City & County of Denver, 978 P.2d 156 9 Colo. App. 1999).

VI.

We also decline to address plaintiffs' contention, raised for the first time in their reply brief, that fees were improper under 13-17-201 because they essentially allowed the case to be dismissed and that such conduct was akin to a voluntary dismissal under C.R.C.P. 41(a). See Estate of Stevenson v. Hollywood Bar & Cafe Inc., supra; see also People v Czmerynski, 786 P.2d 1100 (Colo. 1990)(issue not properly before the court where defendant did not raise the argument at trial or in the opening brief, but raised it for the first time in the reply brief).

We have considered plaintiffs' remaining contentions and find them to be without support in law or the evidence.

Finally, because we do not consider this appeal to be frivolous, we deny defendants' request for attorney fees incurred in this appeal. See Wood Bros. Homes, inc. v. Howard, 862 P.2d 925 (Colo. 1993).

The judgment is affirmed

JUDGE NEY and JUDGE PIERCE concur.

DISTRICT COURT, TELLER COUNTY,
STATE OF COLORADO
Case No. 98CV174 Division 11

ORDER

GLENN RALEIGH, et al.,
Plaintiffs,
VS.
VIOLET TRISCHAN, et. al.,
Defendants.

This matter being before the Court for ruling on the Defendants' motion for attorneys fees and the Court having considered the same, now concludes and ORDERS as follows:

1. That C.R.S. 13-17-201 applies to all tort litigation which is dismissed by the court on the basis of the pleading pursuant to C.R.C.P. 12b. Such was the result in this case and thus attorney's fees are mandatory.
2. The Court's Order of August 20, 1999 allocating costs to each side can not be interpreted as an Order denying attorney's fees.
3. There being no objection to or request for a hearing on the reasonableness of the need for attorney time, or the amount of time or the hourly rate, the Court must review the same based on its experiences as an attorney and judge for over 30 years.
4. After such review the court determines the fees requested to be reasonable and therefore approve them and orders them paid by Plaintiffs to the Defendants.
5. Judgment is therefore ordered in favor of the Defendants against the Plaintiffs in the amount of $7,412.50.

SO ORDERED this 6th day of December, 1999.

BY THE COURT:
"s/David D. Parrish
District Judge

FILED IN THE COMBINED COURTS
OF TELLER COUNTY, COLORADO
DEC 6, 1999
MARY PERRY, CLERK

U.S. Federal Rules of Civil Procedures

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute,pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signatures corrected promptly after being called to the attention of attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief; formed after an inquiry reasonable under the circumstances, -

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument forth extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated. (A) By Motion. A motion for sanctions

under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of; or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues :its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and

discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37. (Amended Aug. 1, 1983; Aug. 1, 1987; Dec. 1, 1993)

Colorado Revised Statutes

13-17-102 - Attorney fees.

(1) Subject to the provisions of this section, in any civil action of any nature commenced or appealed in any court of record in this state, the court may award, except as this article otherwise provides, as part of its judgment and in addition to any costs otherwise assessed, reasonable attorney fees.

(2) Subject to the limitations set forth elsewhere in this article, in any civil action of any nature commenced or appealed in any court of record in this state, the court shall award, by way of judgment or separate order, reasonable attorney fees against any attorney or party who has brought or defended a civil action, either in whole or in part, that the court determines lacked substantial justification.

(2.1) Notwithstanding any other provision of this part 1, the filing of a certificate of review pursuant to section 13-20-602 related to any licensed health care professional shall create a rebuttable presumption that the claim or action is not frivolous or groundless, but it shall not relieve the plaintiff or his attorney from ongoing obligations under rule 11 of Colorado rules of civil procedure.

(3) When a court determines that reasonable attorney fees should be assessed, it shall allocate the payment thereof among the offending attorneys and parties, jointly or severally, as it deems most just, and may charge such amount, or portion thereof, to any offending attorney or party.

(4) The court shall assess attorney fees if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil

procedure or a designation by a defending party under section 13-21-111.5 (3) that lacked substantial justification. As used in this article, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(5) No attorney fees shall be assessed if, after filing suit, a voluntary dismissal is filed as to any claim or action within a reasonable time after the attorney or party filing the dismissal knew, or reasonably should have known, that he would not prevail on said claim or action.

(6) No party who is appearing without an attorney shall be assessed attorney fees unless the court finds that the party clearly knew or reasonably should have known that his action or defense, or any part thereof, was substantially frivolous, substantially groundless, or substantially vexatious; except that this subsection (6) shall not apply to situations in which an attorney licensed to practice law in this state is appearing without an attorney, in which case, he shall be held to the standards established for attorneys elsewhere in this article.

(7) No attorney or party shall be assessed attorney fees as to any claim or defense which the court determines was asserted by said attorney or party in a good faith attempt to establish a new theory of law in Colorado.

(8) The provisions of this section shall not apply to traffic offenses, matters brought under the provisions of the "Colorado Children's Code", title 19, C.R.S., or related juvenile matters, or matters involving violations of municipal ordinances.

Annotator's note. Annotations appearing below from cases decided through 1985 were decided under former § 13-17-101 relating to frivolous or groundless suits involving money damages claims.

Duty of trial court. When a party places a claim for attorney fees in issue, the trial court has a duty to conduct a hearing upon that claim. Zarlengo v. Farrer, 683 P.2d 1208 (Colo. App. 1984); Alessi v. Hogue, 689 P.2d 649 (Colo. App. 1984).

Determination of entitlement to attorney fees cannot be made without adequate findings of fact and conclusions of law on the issue by the trial court. Board of County

Comm'rs v. Auslaender, 745 P.2d 999 (Colo. 1987); Pedlow v. Stamp, 776 P.2d 382 (Colo. 1989).

Trial court was without authority to award attorney fees for plaintiff's initial appeal, absent direction to do so by the appellate court, since subsection (1) of this section, consistent with C.A.R. 38(d), indicates that attorney fees incurred in an appeal may be awarded only by the court in which the appeal is brought. Sullivan v. Lutz, 827 P.2d 626 (Colo. App. 1992).

Award of attorney fees proper where defendant has opportunity to challenge reasonableness of the amount of award. Trial court may not base award on affidavit submitted after trial. Kinsey v. Preeson, 746 P.2d 542 (Colo. 1987).

Pro se litigants are entitled to protection of subsection (6) of this section unless trial court makes an express finding that such litigants knew or reasonably should have known that their claims lacked substantial justification. Failure to respond to a motion for fees does not obviate the need for such a finding. Artes-Roy v. Lyman, 833 P.2d 62 (Colo. App. 1992).

Trial court must make sufficient findings to permit meaningful appellate review of the attorney fees award. Bilawsky v. Faseehudin, 916 P.2d 586 (Colo. App. 1995).

Award of attorney fees improper in abuse of process action where plaintiffs were not represented by an attorney and trial court did not make a finding that the plaintiffs knew or reasonably should have known that filing of the suit lacked substantial justification. Artes-Roy v. Lyman, 833 P.2d 62 (Colo. App. 1992).

An award of attorney fees under this section cannot be held to be confessed by failure to respond to a motion pursuant to C.R.C.P. 121. Artes-Roy v. Lyman, 833 P.2d 62 (Colo. App. 1992).

When fees are awarded, the court is required to make evidentiary findings and must provide the opportunity for a hearing. Pedlow v. Stamp, 776 P.2d 382 (Colo. 1989); Little v. Fellman, 837 P.2d 197 (Colo. App. 1991).

The court is required to award attorney fees only if it finds that an attorney or party brought or defended an action that lacked substantial justification. United Guar. Residential Ins. Co. v. Dimmick, 916 P.2d 638 (Colo. App.

1996).

To the extent § 13-17-101 et seq. is inconsistent with the procedural safe-harbor provisions of Fed. R. Civ. P. 11, it is preempted. McCoy v. West, 965 F. Supp. 34 (D. Colo. 1997).

District Court Practice Standards

District Court Practice Standards

Section 1-22

COSTS AND ATTORNEY FEES

1.COSTS.

A party claiming costs shall file a Bill of Costs within 15 days of the entry of order or judgment, or within such greater time as the court may allow. The Bill of Costs shall itemize and total costs being claimed. Taxing and determination of costs shall be in accordance with C.R.C.P. 54(d) and Practice Standard & sect; 1-15.

2.ATTORNEY FEES.

(a)Scope.

This practice standard applies to requests for attorney fees made at the conclusion of the action, including attorney fee awards requested pursuant to Section 13-17-102, C.R.S. It also includes awards of fees made to the prevailing party pursuant to a contract or statute where the award is dependent upon the achievement of a successful result in the litigation in which fees are to be awarded and the fees are for services rendered in connection with that litigation. This practice standard does not apply to attorney fees which are part of a judgment for damages and incurred as a result of other proceedings, or for services rendered other than in connection with the proceeding in which judgment is entered. This practice standard also does not apply to requests for attorney fees on matters relating to pre-trial sanctions and motions for default judgment unless otherwise ordered by the court.

(b)Motion and Response.

Any party seeking attorney fees under this practice standard shall file and serve a motion for attorney fees within 15 days of entry of judgment or such greater time as the court may allow. The motion shall explain the basis upon which fees are sought, the amount of fees sought, and the method by which those fees were calculated. The

motion shall be accompanied by any supporting documentation, including materials evidencing the attorney's time spent, the fee agreement between the attorney and client, and the reasonableness of the fees. Any response and reply, including any supporting documentation, shall be filed within the time allowed in practice standard § 1-15. The court may permit discovery on the issue of attorney fees only upon good cause shown when requested by any party.

(c)Hearing; Determination of Motion.

Any party which may be affected by the motion for attorney fees may request a hearing within the time permitted to file a reply. Any request shall identify those issues which the party believes should be addressed at the hearing. When required to do so by law, the court shall grant a party's timely request for a hearing. In other cases where a party has made a timely request for a hearing, the court shall hold a hearing if it determines in its discretion that a hearing would materially assist the court in ruling on the motion. In exercising its discretion as to whether to hold a hearing in these cases, the court shall consider the amount of fees sought, the sufficiency of the disclosures made by the moving party in its motion and supporting documentation, and the extent and nature of the objections made in response to the motion. The court shall make findings of fact to support its determination of the motion. Attorney fees awarded under this practice standard shall be taxed as costs.

ANNOTATIONS

Amended and committee comment added, July 9, 1992, effective October 1, 1992.

COMMITTEE COMMENT

1.COSTS. This Standard establishes a uniform, optimum time within which to claim costs. The 15 day requirement encourages prompt filings so that disputes on costs can be determined with other post-trial motions. This Standard also requires itemization and totaling of cost items and reminds practitioners of the means of determining disputes on costs. C.R.S. 13-16-122 (1981) sets forth those items generally awardable as costs.

2.**ATTORNEY FEES**. Subject to certain exceptions, this Standard establishes a uniform procedure for resolving attorney fee disputes in matters where the request for attorney fees is made at the conclusion of an action or where attorney fees are awarded to the prevailing party (see "Scope"). Unless otherwise ordered by the court, attorney fees under C.R.S. 14-10-119 should be heard at the time of the hearing on the motion or proceeding for which they are requested.